

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1315 of 1999

to

FIRST APPEAL No 1319 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

DABHI RATANBEN WD/O DULABHAI  
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Appearance:

Mr.K.G. Sheth, AGP, for the appellants

MR JV JAPEE for Respondent No. 1, 2, 3, 4  
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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 25/04/2000

COMMON ORAL JUDGMENT : (Per: Kadri, J.)

1. Appellants, by filing these appeals under Section 54 of the Land Acquisition Act, 1894 ( to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, have challenged common judgment and award dated September 12, 1997, rendered by learned Assistant Judge, Sabarkantha, at Himatnagar, in Land Reference Cases Nos. 3076 of 1989 to 3080 of 1989. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. A proposal was made to the Government for acquisition of agricultural lands of village Lakhiya for the public purpose known as Anushravan Pond. The said proposal was accepted by the Government and notification to acquire lands of the respondents came to be issued under Section 4(1) of the Act which came to be published in the Government Gazette on October 18, 1984. After following usual procedure under Section 5-A and 5-A(2) of the Act, declaration under Section 6 of the Act was made which was published in the government gazette on July 31, 1986. The Land Acquisition Officer served notices under Section 9(3)(4) of the Act. The respondents appeared before the Land Acquisition Officer and claimed compensation for agricultural lands at the rate of Rs.800/- per Are for irrigated land and Rs.400 per Are for non-irrigated land. The respondents also claimed compensation for superstructure and well situated in the acquired lands. The Land Acquisition Officer, on the basis of material produced before him, made his award dated April 29, 1989 and awarded compensation for acquired lands at the rate of Rs.50/- per Are for irrigated land and Rs.30/- per Are for non-irrigated land. The Land Acquisition Officer also offered compensation for superstructure and well situated on the acquired lands.

3. The respondents were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate, and therefore they filed applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the matter to the District Court, Sabarkantha, for determination of market value of acquired lands, superstructure and well situated in acquired lands. According to the respondents, compensation offered by the Special Land Acquisition

Officer was not adequate looking to the fertility and situation of acquired lands. The respondents contended that they used to raise three crops in a year on acquired lands and were getting income of Rs.8000 to Rs.9000 per Are per year by sale of agricultural produce. The respondents claimed compensation for acquired lands at the rate of Rs.800/per Are for irrigated land and Rs.400/per Are for non-irrigated land.

4. The appellants filed objection against claim petition inter alia contending that the compensation offered by the Land Acquisition Officer was just, adequate and reasonable and the Land Acquisition Officer had taken into consideration all the relevant materials placed before him for fixing market price of acquired lands, superstructure and well situated on the acquired lands. The appellants, therefore, prayed that the reference applications be dismissed.

5. Before the Reference Court, all the reference cases were consolidated and common evidence was led in Land Acquisition Reference No.3076 of 1989. Necessary issues were raised at Exh.6. The respondents, to substantiate their claim for enhanced compensation, examined Navinbhai Somabhai Dabhi, claimant of Land Reference Case No.3079 of 1989, at Exh.17 and Mahmad Ibrahim Valimahmad at Exh.35. On behalf of the appellants, Vikramsinh Sonhsinh Rathod was examined at Exh.53, who was at the relevant time serving as Deputy Executive Engineer at Khedbrahma. The respondents' witness during their deposition described fertility of acquired lands and deposed that the respondents were raising crops of maize, groundnut, tuber, pulses, etc. The witness further claimed that during winter the respondents used to raise crops of wheat, raida, erandi, etc. He deposed that the respondents were getting income of Rs.8000 to Rs.9000 per year from the sale of agricultural produce which was raised on acquired lands. He deposed that, because of compulsory acquisition of the lands of the respondents, they had lost their source of livelihood. He described situation of acquired lands and deposed that villages Songadh, Dantia and Pushina were situated adjoining to acquired lands of village Lakhiya. The witness during his deposition produced award rendered in Land Reference Cases Nos.3326 of 1989 to 3328 of 1989 in respect of acquired lands of village Dantia. Lands of village Dantia came to be acquired on May 22, 1986, wherein, the reference Court had determined market value of acquired lands as on May 22, 1986 at the rate of Rs.375/- per Are for the irrigated lands and Rs.300/- per Are for non-irrigated lands. The respondents also

produced previous award of village Dehgamda at Exh.44. Lands of village Dehgamda were acquired on August 9, 1984, wherein, the Reference Court had determined market value of the lands of said village as on August 9, 1984 at the rate of Rs.350/- per Are for the irrigated lands and Rs.280/- per Are for non-irrigated lands. The witness examined on behalf of the appellant, namely, Deputy Executive Engineer, produced valuation report of the superstructure which was situated on acquired lands at the time of acquisition. In these appeals, we are not called upon to decide value of superstructure situated on acquired lands as no appeal is filed by the respondents for not awarding any compensation for superstructure or well.

6. The Reference Court, on overall appreciation of oral as well as documentary evidence produced by the parties, concluded that previous award Exh.44, which was in respect of acquired lands of village Dehgamda, was not relevant and comparable to determine market value of present acquired lands. However, the Reference Court mainly relied on previous award Ex.35, which related to acquired lands of village Dantia, for determination of market value of present acquired lands. The respondents' witness, Navinbhai Somabhai Dabhi, at Exh.17, had deposed that village Dantia was adjoining to village Lakhia and lands of both the villages were similar in fertility. In previous award exh.35, the Reference Court determined market value of acquired lands of village Dantia as on May 22, 1986 at the rate of Rs.375/- per Are for the irrigated lands and Rs.300/- per Are for non-irrigated lands. As the present lands were acquired in October 1984, the Reference Court deducted Rs.15/- per Are from the amount awarded in the previous award for irrigated lands and Rs.20/- per Are for non-irrigated lands, and determined market value of acquired lands of village Lakhia at the rate of Rs.360/- per Are for the irrigated lands and Rs.280/- per Are for non-irrigated lands, by the impugned common award giving rise to these appeals.

7. Mr.K.G. Sheth, learned Assistant Government Pleader, has taken us through the record and proceedings of the Reference Court, and has vehemently submitted that the previous award relied upon by the Reference Court for determination of market value of present acquired lands is not at all relevant and comparable, and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the respondents to establish that they were

entitled to compensation for acquired lands of village Lakhia at the rate of Rs.360/- per Are for the irrigated lands and Rs.280/- per Are for non-irrigated lands, and, therefore, the impugned award should be set aside.

8. We have also heard learned counsel for the respondents.

9. The respondents had led sufficient evidence before the Reference Court with regard to situation and fertility of acquired lands which was not challenged by the appellants during cross examination of the witness of the respondents, Navinbhai Somabhai Dabhi at Exh.17. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from adjoining village. In our opinion, award Exh.35, which was in respect of acquired lands of village Dantia, was in all respects relevant and comparable for determination of market price of the present acquired lands. Situation and fertility of lands of villages Dantia and Lakhia were similar and the Reference Court has not committed any error in placing reliance on the previous award Exh.35. It may be mentioned that learned single Judge of this Court (Coram: K.R. Vyas, J.), in First Appeals Nos.4017 of 1999 and 4018 of 1999, had determined market value of acquired lands of village Dantia at the rate of Rs.300/- per Are for irrigated lands and Rs.275/- per Are for non-irrigated lands. In the said judgment, learned single Judge had also relied upon previous award of village Songadh, wherein market value of acquired lands of village Songadh was determined at the rate of Rs.360/per Are for irrigated lands and Rs.280/- per Are for non-irrigated lands. The respondents had produced sufficient oral as well as documentary evidence to show that village Songadh was adjoining the village Lakhia and lands of both the villages are having same fertility and the agriculturist of both the villages were raising similar crops. We are, therefore, of the opinion that determination of market vale of present acquired lands of village Lakhia at the rate of Rs.360/- per Are for irrigated land and Rs.280/-per Are for non-irrigated land cannot be called excessive. We may add that the Reference Court has awarded just and reasonable compensation to the claimants for their acquired lands. It may not be out of place to mention that the respondents had lost their only source of income because

of acquisition of their lands and the Reference Court has kept in mind all the relevant aspects for determination of market value of acquired lands belonging to the respondents. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. Therefore, we confirm the determination of market value of present acquired lands of village Lakhia at the rate of Rs.360/- per Are for irrigated land and Rs.280/-per Are for non-irrigated land. The respondents would be entitled to the benefit under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 of the Act. However, the respondents would not be entitled to interest on the amount of solatium as well as on the amount awarded under Section 23(1-A) of the Act in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. 12.

10. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

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